

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 1:19-00159

ARUN DHAVAMANI

**MEMORANDUM OPINION AND ORDER**

Pending before the court is W. Michael Frazier's motion to withdraw as the defendant's counsel. (ECF No. 104.) Mr. Frazier represented the defendant in a criminal case which was tried before this court on November 19-20, 2019. Defendant was found guilty by a jury verdict, and is awaiting sentencing by this court, scheduled for 10:30 a.m. on June 2, 2020. (ECF No. 97.) On May 15, 2020, Mr. Frazier filed a motion seeking leave to withdraw due to deteriorating relations with defendant. (ECF No. 104.) Mr. Frazier states in his motion that defendant "has become increasingly less cooperative with counsel, and has now taken to threatening counsel with lawsuits and/or bar complaints." (Id.) Mr. Frazier states that he notified in writing defendant and defendant's family of his intention to withdraw. (Id.) He had not received any response from defendant or his family by the time of his filing. (Id.) He also asks the court to appoint counsel for defendant for the sentencing hearing. (Id.)

Withdrawal of representation in a criminal action is governed by Local Rule 44.4, which states in part that "[a] motion to withdraw shall be accompanied by a notice of appearance of substitute counsel. In the absence of the appearance of substitute counsel, a motion to withdraw shall set forth sufficient information to enable the court to rule." L.R. Cr. P. 44.4. There has not yet been any notice of appearance of substitute counsel.

As noted above, Mr. Frazier requests that the court appoint counsel for defendant. "To qualify for court-appointed counsel under the CJA [Criminal Justice Act], a 'defendant bears the burden of proving that he lacks the [financial] means to retain counsel.'" United States v. Gutierrez-Cruz, 680 F. App'x 203, 205 (4th Cir. 2017) (quoting United States v. Ductan, 800 F.3d 642, 652 n.5 (4th Cir. 2015)).

The court hereby **ORDERS** a hearing to be held at 10:00 a.m. on June 2, 2020, in Bluefield, at which time the court will hear from Mr. Frazier and defendant on the motion to withdraw. The court will hear from defendant whether he concurs with Mr. Frazier's motion and he also desires new representation, and if defendant does, whether defendant wishes to retain counsel himself or have the court appoint counsel for him. Then, if defendant wishes to have the court appoint counsel on his

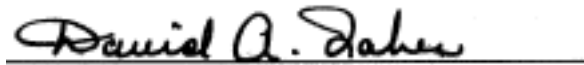
behalf, the court will determine whether defendant qualifies for court-appointed counsel.

Defendant and all counsel should be prepared for the sentencing hearing to be held as scheduled at 10:30 a.m. on June 2, 2020, should the court deny Mr. Frazier's motion to withdraw.

The Clerk is directed to send a copy of this Order to all counsel of record, and to defendant.

It is SO ORDERED this 20th day of May, 2020.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge